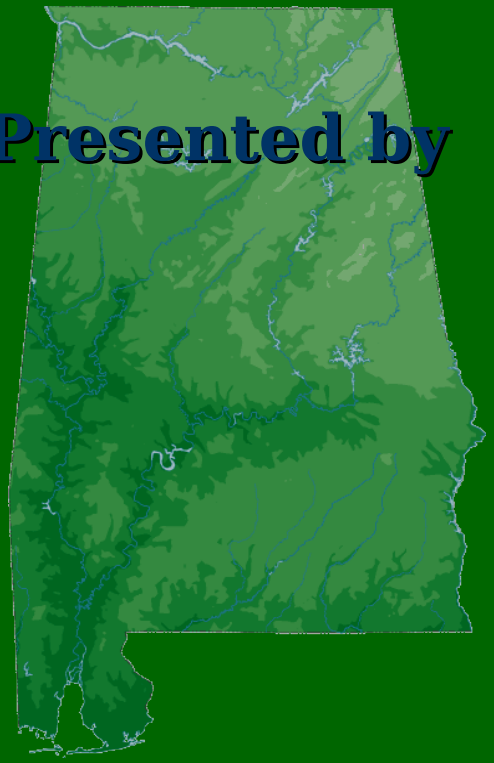
REGULATORY PROGRAM

One Team: Relevant, Ready, Responsive, Reliable

Program Overview



Presented by

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Agenda

- Program Goals
- Authorities/Jurisdiction
- Wetlands Criteria
- Types of Permits
- Permit Timelines/Procedures
- Enforcement

Why we do what we do…

The following slides are Regulatory 101 and are intended to assist us in an effort to better communicate the Corps' Regulatory Mission.

Program Goals

- **Protect aquatic environment, including wetlands**
- **Enhance program administration efficiency**
- **Provide fair flexible and balanced decisions while allowing reasonable development**

Regulatory Jurisdiction

- Rivers and Harbors Act
- Clean Water Act

Authorities

Section 9, Rivers and Harbors Act (RHA) of 1899 (33 USC 401)

A PERMIT IS REQUIRED FOR THE CONSTRUCTION OF DAMS OR DIKES ACROSS ANY "NAVIGABLE WATERS OF THE U.S."

Section 10 of the RHA of 1899 (33 USC 403)

Prohibits the unauthorized obstruction or alteration of any navigable water of the U.S.

What requires a Section 10 Permit?

- Structure(s) in over or under a navigable waterbody

Pier	Boat Dock
Boat Slip	Boat Ramp
Breakwater	Bulkhead
Riprap	Jetty
Piling	Artificial Reef
Utility Lines* (above or below H_20)	Permanently moored floating vessel

- Dredging or disposal of dredged material, excavation, or filling

- Any other obstacle or obstruction, or modification to navigable waters.

Section 404 of the Clean Water Act (33 USC 1344)

Prohibits the discharge of dredged or fill material into all “waters of the United States, including wetlands” without obtaining a permit from the Corps of Engineers

Clean Water Act – Section 404(b)(1)

- **EPA, in conjunction with Army (Corps) will develop guidelines to be applied at each discharge site.**

- **These regulations are at 40 CFR 230, and are commonly called the Section 404(b)(1) Guidelines.**

- **EPA Administrator authorized to restrict or deny the use of any discharge site – "EPA's veto authority." Can be exercised before or after Corps reaches decision to issue a permit. (40 CFR 231)** EPA has used very sparingly – approx. 10 times in 25 years

What requires a Section 404 Permit?

- Placement of fill material
- Slab-on-grade foundations
- Most road construction
- Dam construction and Impoundment
- Levee and dike construction
- Mechanized land clearing*
- Grading and landscaping*
- Certain pile-supported structures

Other Authorities

- Compliance with other laws (NEPA, ESA, NHPA, etc.)

Regulatory Jurisdiction

- Rivers and Harbors Act
- Clean Water Act

- Jurisdiction - Waters of the U.S. (33 CRF 328)

- All waters currently used, used in the past, or susceptible to use in interstate or foreign commerce, including all tidal waters (e.g., navigable “in fact” or by definition).

- Interstate waters including interstate wetlands.

- Intrastate waters whose use or degradation could affect interstate or foreign commerce

- All impoundments of waters defined as waters of the U.S.

- Tributaries of the above.

- The territorial seas.

Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230)
[Commonly known as the Section 404(b)(1) Guidelines]

- **EPA Regulations applied by the Corps**

- **Corps policy is that they are the substantive environmental criteria against which all proposed discharges of dredged or fill material into waters of the United States must be measured against.**

Restrictions on Discharge (230.10)

- No discharge shall be permitted if there is a practicablealternative. Must be the least environmentally damaging practicable alternative.

- Practicable defined as available and capable of being done after taking into consideration costs, logistics, and existing technology in light of the overall project purpose.

- Rebuttable presumptions for non-water dependent discharges to special aquatic sites:
  - Alternatives are presumed to be available
  - Alternatives presumed to be less damaging
  - Applicant must clearly and convincingly rebut presumptions

Restrictions on Discharge (230.10) continued

- No disharge permitted if:
  - Violates any State water quality standard or toxic effluent standards
  - Jeopardizes existence of endangered species or destroys or adversely modifies designated critical habitat

- Results in significant degradation

- All appropriate and practicable steps to minimize adverse effects are not taken

- Corps determines that it does not comply with Guidelines

What are wetlands?

Wetland Definition [33 CRF 328(3)(B)]

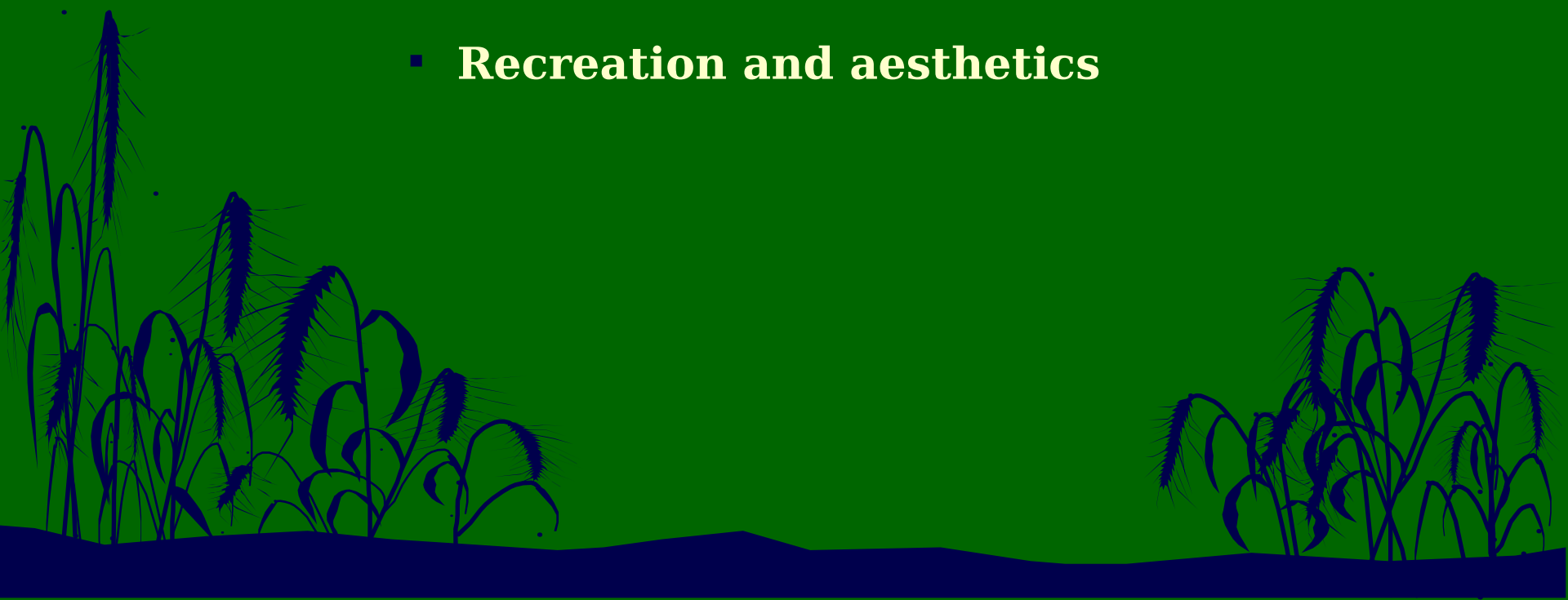
Those areas inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include marshes, swamps, bogs, and similar areas; also includes special aquatic sites such as riffle and pool complexes and submerged vegetation.

Wetland Criteria [33 CRF 328(3)(B)]

- Hydrology
- Hydrophytic Vegetat
- Hydric Soils

Why are wetlands important?

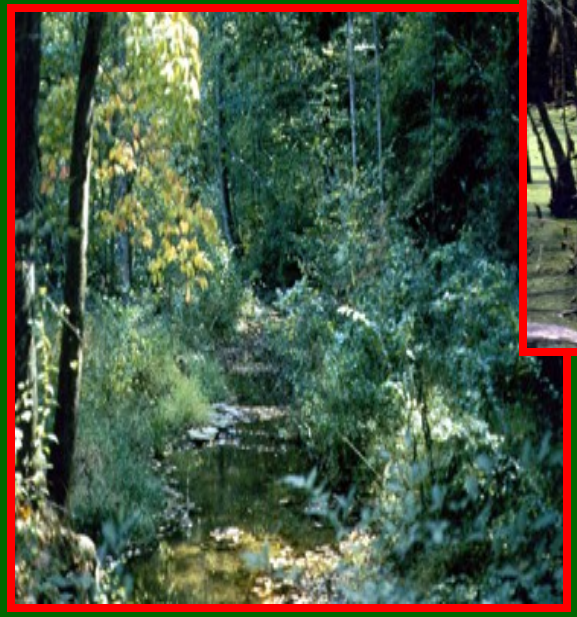
- Water Quality Improvement
- Water Supply
- Flood Protection
- Recreation and aesthetics



Value, Yes or No?

- 2005 Gallup survey says that 93% of Americans believe the Clean Water Act plays an important role in maintaining safe/clean water for the future.

- 1 acre of wetlands can filter over 30,000 gallons of water per hour.



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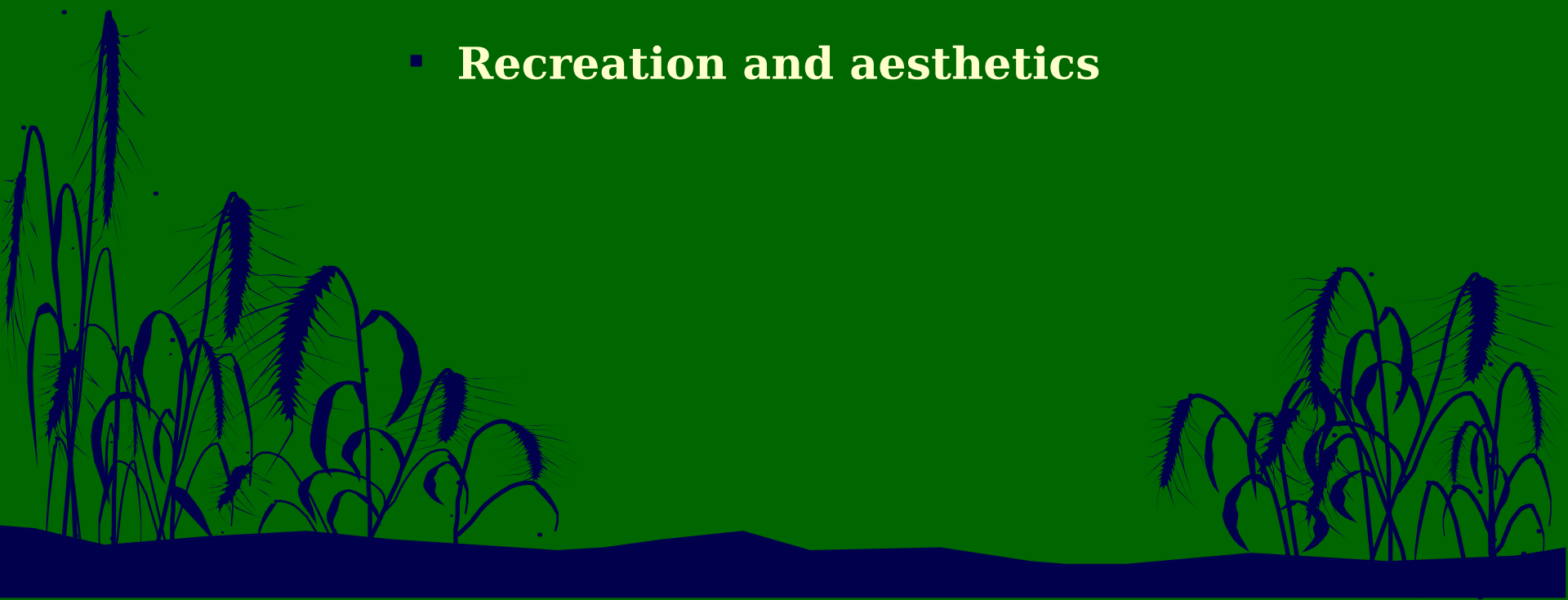

How Do We Regulate Work?

- **Permits**
- **Enforcement**

Types of Permits

- General Permits Include:
  - Regional
  - Programmatic
  - Nationwide
- Standard Permits Include:
  - Letter of Permission
  - Individual
  - Provisional
  - Emergency
  - After the Fact

General Permits (GP's)

Types of GP's:

- **Regional**
- **Programmatic**
- **Nationwide**

- **Permit that most minor activities are authorized under.**
- **Currently AL Power is administering our GP Program on AL Power Lakes.**
- **GP for Lakes/Resource Offices forthcoming.**

Nationwide Permits (NWP) (33CFR 330.1)

- May authorize minor filling, roads, utility lines, maintenance of existing structures and other minor activities.
- Most NWPs for fill require mitigation; greater than a 1/10th of an acre.

Standard Permit (SP)

Types of SP's:

- **Letter of Permission**
- **Individual**
- **Provisional**
- **Emergency**
- **After the Fact**

- **Permit that most activities that may cause more than minimal adverse effect to the aquatic environment**

- **Exceed terms and conditions of GP**

Letters of Permission

- Typically used to authorize activities that may not fit the General Permit, but still have relatively minor impacts to waters and no impacts to wetlands; no appreciable opposition.
  - small marinas
  - long bulkheads
  - minor dredging
- Requires agency review by pretty much every state and federal resource agency.
- Separate authorization from AL Power, USACE and the State required.

Individual Permit

- **This is where the leftovers go.**
- **Anything that does not fit a NWP, GP or qualify for an LOP has to go through this process.**
- **Requires Public Notice and review by pretty much every state and federal resource agency.**
- **Long, complicated and detailed process.**
- **Most require mitigation.**

Approximate Timelines

- Regional – 30-45 days
- Programmatic – 45 days
- Nationwide – 45 days
- Letter of Permission – 30 days
- Provisional – 45 days
- Emergency - 24-72 hours
- After the Fact
  - NWP within approximately 45 days
  - IP 3-6 months

Procedures

- **Pre-application consultation (optional, but highly encouraged)**
- **<u>Complete</u> Application submitted**
- **File number assigned (ORM) and PM assigned.**
- **Acknowledgement letter sent to applicant**
- **File reviewed for completeness within 10 days of receipt and determination of applicable permit/JD procedure.**
- **Request for additional information if necessary**
- **Public notice issued (within 15 days of completed application); 15-30 day comment period**
- **Public notice is reviewed by Corps and "public, groups, agencies"**
- **Corps considers all comments & consults with other agencies if appropriate**
- **Applicant could be asked to provide additional information**
- **Public hearing held, if requested (can be denied)**

Procedures

- Complete Public Interest Review:
  - Evaluation Factors Considered:
    - Conservation-Economics-Aesthetics-Wetlands-Historic properties-Flood Hazards-Floodplain Values-Land Use-Navigation-Recreation-Energy Needs-Mineral Needs-Safety-Water Quality-Fish & wildlife values-Shore erosion & accretion-Water supply & conservation-Food & Fiber Production-Considerations of Property Ownership-General Environmental Concerns-Needs & Welfare of the People
  - Legal Requirements:
    - Water Quality Certification (404 actions)
    - Coastal Zone Consistency (Tidewater counties)
    - 404(b)(1) Compliance (404 actions)
    - NEPA Compliance (EA, FONSI, EIS)
- COE makes decision and writes decision document
- Permit issued or denied (applicant advised of reason)
- Administrative appeal process (optional)

Enforcement Actions

- **Work without a DA permit**
- **Work outside conditions of DA permit**
- **Amounts:**
  - **Criminal: various fine amount per day and/or imprisonment**
  - **Civil: up to $25,000 per day**
  - **Class I Administrative: up to $25,000**
  - **Class II Administrative: up to $125,000**
- **EPA Referral**

Is it wet?

Don’t hesitate to ask…
before you do the work!

Questions

Thank you for your interest in the U.S. Army Corps of Engineers Regulatory